



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171136

PRELIMINARY RECITALS

Pursuant to a petition filed January 05, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on February 04, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's FoodShare (FS) benefits at his renewal because he was a full-time student who does not meet a FS exemption.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. On December 28, 2015 the petitioner completed a renewal for his FoodShare (FS) benefits. During the renewal the petitioner reported that he was a full time student. He did not anticipate graduating in two years.

3. The petitioner does not have work study and he does not have a job outside of school. During the hearing the petitioner reported that he was a “disabled student,” however he had not previously reported that to the agency. After the hearing the petitioner intended to obtain a letter from his psychologist that he was disabled, and reapply for FS benefits.
4. On December 29, 2015 the agency sent the petitioner a notice stating that they were discontinuing his FS benefits effective January 1, 2016 because he was enrolled in school for more than 20 hours per week, and did not meet an exemption for full-time students, which would qualify him for FS benefits.
5. On January 5, 2016 the Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing.

DISCUSSION

A person who is enrolled at least half time in higher education is ineligible for FS unless she meets a specific exemption criterion. 7 C.F.R. §273.5(a); FS Handbook, Appendix 3.15.1. The exemption criteria are found at 7 C.F.R. §273.5(b). A student in higher education can be exempt if she is:

- (1) Under age 18 or over age 49;
- (2) Physically or mentally unfit for gainful employment;
- (3) Receiving Aid to Families with Dependent Children (AFDC);
- (4) Enrolled as a result of participation in the AFDC work program or its successor;
- (5) Employed a minimum of 20 hours per week, or if self-employed, receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;
- (6) Participating in a state or federally financed work study program during the school year;
- (7) Participating in on-the-job training;
- (8) Responsible for the care of a dependent household member under age 6;
- (9) Responsible for a dependent household member between 6 and 12 if child care is unavailable;
- (10) A single parent responsible for a dependent child under age 12.
- (11) Assigned or placed in the school by or in compliance with a work program, including the Food Stamp Employment and Training (FSET) Program.

See also the FS Handbook, App. 3.15.1. The Handbook provisions differ from the federal regulation in that Wisconsin Works (W-2) eligibility replaces AFDC as described in no. 3 above, there is an additional exemption for a person placed in school through the Workforce Investment Act, and there is an additional exemption for a student “enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.”

The petitioner does not meet any of the exemption criteria. Although the petitioner is enrolled in 2 year technical school, he is not in an educational program designed to be completed in two years. He is double majoring, which will take him longer than three years to complete. In addition, there is no evidence that this is a program that will lead to employment in demand. During the hearing the petitioner mentioned that he has a disability. Although he is hoping for gainful employment, he understands that his disability could limit that. Given these facts, it appears that the petitioner may be exempt under sub 2. Unfortunately, the petitioner did not present this information until the hearing. An agency can only act on information when a recipient provides that information. The petitioner was going to obtain a note from his psychologist, and reapply for FS benefits. At the time of renewal, the petitioner did not provide information, and does not meet any other exception allowing a full-time student to receive FS benefits. Thus, the agency correctly terminated the petitioner’s FS benefits effective January 1, 2016.

CONCLUSIONS OF LAW

The petitioner is ineligible for FS because he is a full-time student who does not meet a FS exemption.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

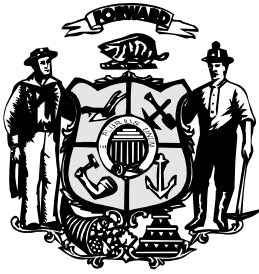
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of February, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 9, 2016.

Kenosha County Human Service Department
Division of Health Care Access and Accountability